avoid unjust enrichment and to carry out the presumed intention of the parties—are as necessary and are as fully accomplished in such a case as if the legal title to the land had passed. Therefore it would seem that a resulting trust in a mortgage in a lien theory state might well be sustained.

WILLS—CONSTRUCTION—ESTATE IN FEE CREATED BY DEVISE WITH UNLIMITED POWER OF DISPOSAL DURING LIFE.—A testator devised his real and personal property to a woman to be used by her during her life with full powers of alienation, and upon her decease without issue whatever remained unused was to revert to the testator's estate. *Held,* that the devisee takes an estate in fee. Sharpe and Clark, JJ., *dissenting. Gibson v. Gibson* (1921, Mich.) 181 N. W. 41.

In the construction of a will the intention of the testator, as expressed by the words of the entire instrument, prevails, provided it be within the rules of law, one of which is that no limitation over after a fee simple estate is valid. *Smith v. Bell* (1832, U. S.) 6 Pet. 68. Due to the vague phraseology of wills, the cases often are confusing as to the estate devised, and the intention of the testator is exceedingly difficult to determine. For the purpose of analysis, the decisions may be classified as follows: (1) "To A for life with unrestricted power of disposal." Here a life estate is expressly devised, and by the great weight of authority, the addition of an unrestricted power of disposal does not enlarge the estate to a fee. Any remainders over are therefore valid. *Steiff v. Seibert* (1905) 128 Iowa, 746, 105 N. W. 328, 6 L. R. A. (N. S.) 1186, note; but see *contra, Barnett v. Blain* (1919) 126 Va. 179, 101 S. E. 239. (2) "To A with restricted power of disposal." This is a general devise, but the limited power of alienation shows an intention to pass less than a fee and the devisee therefore takes only a life estate. *Gadd v. Stoner* (1897) 113 Mich. 689, 71 N. W. 1111. (3) "To A with unrestricted power of disposal." Here any implication of a life estate is destroyed by the unlimited power of disposal, and the devisee takes a fee simple estate. *Henderson v. McCowan* (1920, N. J. Eq.) 110 Atl. 517. But a few cases hold that where the testator has provided a remainder over after such a general devise, his intention is to give the first devisee only a life estate. *Smith v. Bell, supra; Robinson v. Finch* (1898) 116 Mich. 180, 74 N. W. 472. Statutes in most states specifically provide that a general devise without words of inheritance will pass a fee unless it clearly appears that the intention of the testator was to create a lesser estate. Mich. Comp. Laws, 1915, sec. 11818; see *Bilger v. Nunan* (1911, C. C. D. Ore.) 186 Fed. 665. (4) "To A with unrestricted power of disposal for her natural life." Where there is no remainder over, the devisee takes a fee, since the courts are opposed to partial intestacy. *In re Weien's Will* (1908) 139 Iowa, 657, 116 N. W. 791, 18 L. R. A. (N. S.) 463, note; *In re Hardaker's Estate* (1902) 204 Pa. 181, 53 Atl. 761. Where there is a remainder, there seem to be two distinct lines of cases. Under one theory the devisee gets only a life estate and the remainder over is valid. Thus in effect there is an express life estate with an unrestricted power of disposal and a remainder over. *Walker v. Pritchard* (1887) 121 Ill. 221, 12 N. E. 336; *Perkinson v. Clarke* (1908) 135 Wis. 584, 116 N. W. 229; see Kales, *Future Interests* (2d ed. 1920) sec. 168. The other view has evidently developed as a result of the statutes which raise a presumption of an estate in fee. The courts hold that in the above limitation it does not *clearly* appear that the testator intended to restrict the devisee to a life estate, since even were the devise expressly in fee, the devisee would have no greater powers. *Roberts v. Lewis* (1894) 153 U. S. 367, 14 Sup. Ct. 945; *Bilger v. Nunan, supra; Luckey v. McCray* (1904) 125 Iowa, 691, 101 N. W. 516. The instant case follows this latter view which, it seems, fails to take into account the intention of the testator as it appears from the entire will. The reasoning would apply as well to an express life estate with unrestricted power of disposal and remainder over.